IN THE UNITED STATES DISTRICT COURT 1 FOR THE DISTRICT OF PUERTO RICO 2 3 UNITED STATES OF AMERICA 4 **Plaintiff** 5 CRIMINAL NO. 05-120(JAG) v. 6 RAFAEL ANTONIO FERNANDEZ Defendant 7 8 REPORT AND RECOMMENDATION 9 On this date defendant appeared before the undersigned to plea guilty to Count I of the 10 indictment charging him with violating of 8 U.S.C. §§ 1326(a) and (b)(2). Defendant was represented by AFPD Francisco Valcárcel Fuster, with whom he is satisfied with his representation. 11 The government, in turn, was represented by AUSA Vernon B. Miles. The parties duly executed a consent form permitting the undersigned to take defendant's plea, which was a straight one. 12 Upon examining defendant throughout the proceeding, the undersigned finds him competent 13 to enter a plea. Defendant was advised at the hearing of the minimum and maximum statutory penalties he faces, and that the Sentencing Guidelines are advisory in nature. He was further advised 14 that the sentencing judge has the authority to sentence him within those parameters, at the Court's discretion. More so, once he is sentenced, defendant may not withdraw his plea simply because he 15 is not satisfied with the sentence imposed upon him. The undersigned also advised defendant of the constitutional rights he waives by entering a guilty plea. 16 Upon inquiry by the Court, defendant accepted all the elements of the offenses outlined in 17 Count I of the indictment, as well as the fact that he acted knowingly, willfully and intentionally. 18 It is thus recommended by the undersigned that defendant's guilty plea be accepted, and sentence be imposed upon him accordingly. 19 This report and recommendation is issued pursuant to 28 U.S.C. § 636 and Local Rule 72(d). 20 21 SO RECOMMENDED. 22 In San Juan, Puerto Rico, this 10th day of November, 2005 23 24 25 S/Gustavo A. Gelpí 26 **GUSTAVO A. GELPI** United States Magistrate-Judge 27 28